

MEMORANDUM OF UNDERSTANDING
BETWEEN THE
STATE OF NORTH DAKOTA
AND
THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGARDING PSD IMPLEMENTATION
May 2, 2003

This Memorandum of Understanding is entered into by the State of North Dakota (State) and the United States Environmental Protection Agency (EPA).

WHEREAS, Prevention of Significant Deterioration (PSD) increment consumption within the State is of concern to both the State and EPA. The State has responsibility for managing air quality within the State so as to prevent significant deterioration of air quality in Class I areas that may result from sources within the State. EPA has responsibility for ensuring adherence to the Clean Air Act (CAA).

WHEREAS, the State desires to both protect and enhance the air quality in North Dakota and also allow the development of additional electric generation facilities and industry.

WHEREAS the State and EPA disagree on whether there are PSD increment exceedances within Class I areas in North Dakota and other areas, and this agreement is intended to initiate resolution of that disagreement.

NOW THEREFORE, without agreeing that there is, or is not a PSD increment exceedance, the purpose of this Memorandum of Understanding being to identify actions to be taken and a process to be used by both the State and EPA in order to ensure that the PSD increment is protected and to attempt to resolve the underlying disagreement, the parties agree:

1. Permit reductions will be identified of up to 105,000 tons (allowable) per year of SO₂ for the major sources within the modeling domain in the State. This will be accomplished through the EPA approved, air quality protection programs managed by the State.
2. A North Dakota State Implementation Plan (SIP) and appropriate permit limits will be prepared to make federally enforceable an allowable SO₂ emission rate of not more than 35,000 tons per year at Great River Energy's Coal Creek Station.
3. In addition to paragraph 2 above, the State and EPA will work towards identifying and making federally enforceable, as soon as reasonably feasible, additional SO₂ reductions in actual annual emissions.

4. The State without waiving its authority under the CAA, will work with EPA to further refine the level of emission reductions (if any) necessary to protect the increment. This process of further evaluation shall be concluded in a Memorandum of Agreement (MOA) entered into by the parties no later than August 31, 2003. This process does not substitute for either party's obligations under State or Federal law.
5. The State and EPA are engaged in separate proceedings to resolve these issues. The State will conclude its administrative process by conducting a hearing on June 12, 2003, and considering issues directed by Dr. Dwelle, North Dakota State Health Officer, in his order of August 8, 2002 and making final determinations thereon. The State and EPA will concurrently release to the public their modeling analyses on or before May 31, 2003. As part of its process, EPA will publish a federal register notice of availability for comment of the EPA modeling analysis. Each will evaluate and consider in good faith, information received from the other in these proceedings.
6. The modeling analyses will be considered in formulating the Memorandum of Agreement, which will include specifics such as:
 - a. Additional monitoring sites or equipment, if determined to be necessary,
 - b. Additional emission reductions, if determined to be necessary,
 - c. Schedules for any necessary SIP amendments, and
 - d. Regulatory certainty for industry that make investments to improve air quality, to the extent allowed by law.
7. The State and EPA acknowledge that before taking any final agency actions contemplated or referenced in this document or contemplated in a Memorandum of Agreement, those final agency actions will be subject to public notice and comment in accordance with applicable requirements, as required by State and Federal law.

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